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November 8, 2007

57739-000020

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket Nos. 06-150, 01-309, 03-264, 06-169, 96-86, 07-166, CC Docket No. 94-102, and PS Docket No. 06-229)

Dear Ms. Dortch:

On November 8, 2007, Carl Northrop of Paul, Hastings, Janofsky & Walker LLP, representing MetroPCS Communications, Inc. ("MetroPCS"), transmitted the attached *ex parte* letter to Fred Campbell, Bureau Chief of the Wireless Telecommunications Bureau. In addition, Carl Northrop participated in a teleconference with Margaret Wiener concerning the proposals made in the attached *ex parte* letter.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,

/s/ Michael Lazarus

Michael Lazarus  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

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November 8, 2007

57739-000020

By Electronic Mail – Fred.Campbell@fcc.gov

Fred Campbell, Bureau Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Service Rules for the 698-746, 747-762 and 777-792 MHz Bands (WT Docket Nos. 06-150, 01-309, 03-264, 06-169, 96-86, 07-166, CC Docket No. 94-102, and PS Docket No. 06-229)

Dear Mr. Campbell:

MetroPCS Communications, Inc. (“MetroPCS”) appreciated having the opportunity to meet with you and other members of the Bureau staff on October 31, 2007, to discuss MetroPCS’ Petition for Reconsideration in the above-referenced proceedings. The company has given considerable and thoughtful consideration to the useful dialogue we had, and is filing this letter to follow up on some of the questions that came up and comments that were made in the course of the discussion. In addition, the company has reduced its proposals into specific rule changes so that the Bureau can fully consider them in the context of the Commission’s existing rules. Attached hereto as Attachment 1 is a redlined document showing the specific language that MetroPCS proposes. The rationale behind the specific proposals is as follows:

- Exclusion of Large Bodies of Water from the Calculation of Geographic Coverage: MetroPCS proposes that, like the exemption for government land, the Commission exempt large bodies of water from the area that must be included in calculating the percentage of geographic coverage. The question arose in our meeting as to how the Commission should distinguish between large bodies of water (e.g. the Great Lakes) deserving exemption and smaller bodies of waters (e.g. streams and tributaries) that do not merit exemption. To address this issue, MetroPCS has formulated a definition for the exclusion that is based upon existing statutory precedent (33 U.S.C. § 1268(a)(3)(B)) and the Natural Resources Conservation Service 1997 Natural Resource Inventory. In effect, this definition would permit a licensee to exclude natural and manmade lakes, ponds, reservoirs, bays, gulfs, and estuaries of at least 40 acres, which is the size used by the Natural Resources Conservation Service to define “large bodies of water.” One of the benefits of using existing definitions is that the Commission can avoid having to develop its own standards, which allows for greater uniformity between governmental agencies.

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- Exclusion of Historic Districts from the Calculation of Geographic Coverage: MetroPCS proposes that the Commission exempt Historic Districts from the area that must be included in calculating the percentage of geographic coverage due, *inter alia*, to severe siting difficulties in areas of this nature.<sup>1</sup> Two questions arose in our meeting: (1) whether some Historic Districts were simply too small to account for; and, (2) whether an exemption for larger historic districts was necessary in view of the existing exemption for governmental lands. MetroPCS has determined, via research from the National Register of Historic Places (<http://www.nationalregisterofhistoricplaces.com/districts.html>), that many historical areas are privately owned, and thus would not be considered federal or state lands that are currently excluded from the geographic coverage requirement. Consequently, MetroPCS continues to recommend that the Commission exclude historic districts, as designated by the National Register of Historic Places, from the coverage requirement. Moreover, MetroPCS is sensitive however to the fact that including very small Historic Districts could prove to be more trouble than it is worth. Thus, MetroPCS proposes that the exclusion be limited to Historic Districts which consist of a contiguous area of greater than 640 acres, which is one square mile. Please note that the referenced website address for the National Register of Historic Places provides the acreage of each Historic District, and thus the Commission and licensees will be able to readily ascertain whether a particular area is properly excluded.
- Exclusion of Areas Completely Surrounded by the Licensee's System from the Calculation of Geographic Coverage: MetroPCS also proposed that the Commission exclude from the calculation of its geographic coverage requirement unserved areas that are completely surrounded by the licensee's signal coverage area – the so-called “hole in the doughnut.” In our meeting, the Bureau expressed concern that this proposal might allow carriers to retain large expanses of unserved area that was encompassed by ribbon systems serving only major highways. This was not MetroPCS' intent. To address the Bureau's concern, MetroPCS has modified its proposal by limiting the “hole in the doughnut” exclusion to wholly encompassed areas of *50 square miles or less*. This would only allow carriers to exclude from the geographic calculation small areas that are precluded from coverage due to terrain, zoning or other site restrictions. Notably, the Commission already has determined that it will not allow new entrants to propose service to unserved areas that are less than 50 square miles.<sup>2</sup> Thus, there is absolutely no public interest reason not to allow the original licensee to retain wholly encompassed areas of this size since they can never be served by another entity. This will also eliminate an anomaly in the existing rules where neither the existing licensee, nor any other licensee, would be able to serve this unserved area. Allowing the existing licensee to retain this area will minimize the impact of

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<sup>1</sup> These areas provide the same types of obstacles to coverage as do federal and state lands, for which the Commission has stated that “covering government land may be impractical, because these lands are subject to restrictions that prevent a licensee from providing service or make provision of service extremely difficult.” *700 MHz Order* at para. 160.

<sup>2</sup> 47 C.F.R. § 27.14(g)(3).

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natural changes in a licensee's system over time. And, if service can be added to the area, the most likely service provider will have the ability to provide such service.

- MetroPCS originally proposed that the Commission exclude from the geographic coverage requirement calculation areas within zip codes with less than 5 persons per square mile. Recognizing that the Commission is not anxious to categorically exclude sparsely populated areas that may be underserved at present, MetroPCS no longer is requesting this exclusion, so its proposed language does not include any provisions for this exclusion.
- MetroPCS originally proposed that the Commission modify its keep-what-you-use rule to allow carriers to retain an expansion area of no greater than 15% larger than the calculated service area of the existing network. Recognizing that there may be difficult implementation issues in connection with this proposal that may outweigh the benefits, MetroPCS no longer is requesting this exclusion. Difficulties presented by the loss of an exterior site can be addressed in appropriate circumstances by waiver.
- Triggered Keep-What-You Use: MetroPCS continues to propose a modified "keep what you use rule" that would only cause the original license to lose license area if a *bona fide* third party steps forward to serve the unserved area. In our meeting, the Bureau expressed the concern that the mechanics of the modified rule were not fully developed. To address the Bureau's concern, MetroPCS has modified its original proposal, and is now proposing specific rule language that spells out the procedure by which third-parties are given the opportunity to acquire unserved lands if a licensee does not reach its 8/10 year geographic coverage benchmarks.

Under MetroPCS' modified proposal, if a licensee's 8/10 year benchmark is not met, third-parties would have a 30-day window immediately following the end of the license term during which they may file license applications to serve these unserved areas. During this period, licensees that had their authority to operate terminate automatically would not be able to file applications to provide service. However, if no third-party files a license application during this 30-day window, the area is of no value to a third-party licensee, and thus the unserved area would be licensed automatically to the original licensee, and thereafter be deemed part of the original licensee's license area.

Also, MetroPCS has preserved the Commission's rule that any new licensee would have 12 months to construct the unserved area as well as provide signal coverage and offer service over 100 percent of the geographic area of the new license area. If the third-party fails to provide such coverage, the area would then be licensed back automatically to the original licensee, and be deemed part of the original licensee's license area. These proposed rules reduce the prospect that unserved areas will be stripped from the licenses of the original licensee, and then lie fallow for years to come. This approach provides a meaningful opportunity for a third

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party to provide service to an unserved area, while recognizing that, in many cases, the original licensee will be best positioned to serve less populous areas economically as well as has the greatest economic incentive to do so. By automatically reverting unserved areas back to the original license in the absence of third-party desire or capability to build-out these areas, the Commission will be placing these unserved areas in the hands of the entity that it most likely to build them out. On the other hand, these proposed rules allow third-parties the unfettered opportunity to acquire such unserved areas, in the event a third-party believes that it has the capability to build such areas out. However, if the third-party is unable to build-out its acquired unserved area, the forfeited license areas will not remain fallow in the Commission's hands. This rule also simplifies the burden on the Commission by limiting the application window to a fixed time, thereby avoiding the need to have multiple auctions. This also ensures that recaptured area is not merely held indefinitely by the Commission.

These modifications reflect a good faith effort by MetroPCS to respond to the comments and questions of the Commission staff. Notably, the refinements in the rules sought by MetroPCS still result in the strictest geographic coverage requirements in the Commission's history, while providing carriers with realistic opportunities to retain and utilize spectrum acquired at auction.

In addition, MetroPCS continues to request that the Commission adopt rule changes to clarify the circumstances in which licensees will be subject to additional monetary fines and license forfeitures for failing to meet the build out requirements. An attachment containing the previously filed language proposed by MetroPCS in this regard is included herein for convenient reference. *See* Attachment 2. By adopting these proposed changes, the Commission will avoid deterring bidders with the ill-defined risk of sanctions.

We would be happy to meet with you to discuss any of these proposals with you further.

Kindly refer any questions in connection with this letter to the undersigned.

Respectfully submitted,



Carl W. Northrop  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Margaret Wiener ([Margaret.wiener@fcc.gov](mailto:Margaret.wiener@fcc.gov))  
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# ATTACHMENT 1

## Proposed Refinements to the Geographic Coverage Requirements

27.14(g) WCS licensees holding EA authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, cellular market authorizations for Block B in the 704-710 MHz and 734-740 MHz bands, or EA authorizations for Block E in the 722-728 MHz band, if the results of the first auction in which licenses for such authorizations are offered satisfy the reserve price for the applicable block, shall provide signal coverage and offer service over at least 35 percent of the geographic area of each of their license authorizations no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), and shall provide such service over at least 70 percent of the geographic area of each of these authorizations by the end of the license term. In applying these geographic benchmarks, licensees are not required to include (1) land owned or administered by government as a part of the relevant service area; (2) the Great Lakes, as defined in 33 U.S.C. § 1268(a)(3)(B), and those other inland bodies of open water that are classified as "Lakes" or as "Large water bodies" under the Natural Resources Conservation Service 1997 Natural Resource Inventory (<http://www.nrcs.usda.gov/technical/NRI>); (3) historic districts, as designated by the National Register of Historical Places (<http://www.nationalregisterofhistoricplaces.com/districts.html>), that consist of a contiguous area of greater than 640 acres; and, (4) unserved areas of less than 50 square miles that are completely surrounded by the licensee's signal coverage area. Licensees may count ~~covered government land~~ any portions of the areas described in subparagraphs (1), (2), (3) and (4) above that are within its signal coverage for purposes of meeting their geographic construction benchmark, but are required to add ~~the any portions of the covered government land areas~~ to the total geographic area used for measurement purposes. Licensees are required to include those populated lands held by tribal governments and those held by the Federal Government in trust or for the benefit of a recognized tribe. Notwithstanding subsections (g), (h), or (i) of this section, all unserved areas listed in subparagraphs (1), (2), (3) and (4) above that are completely surrounded by the licensee's signal coverage area shall remain part of the licensee's license area.

(j) In the event that a licensee's authority to operate in a license area terminates automatically under subsections (g), (h), or (i) of this section, such areas will become available for reassignment pursuant to the following procedures:

(1) The Wireless Telecommunications Bureau is delegated authority to announce by public notice that these license areas will be made available and establish a 30-day window during which third parties may file license applications to serve these areas. During this 30-day period, licensees that had their authority to operate terminate automatically for unserved areas may not file applications to provide service to these areas. Applications filed by third parties that propose areas overlapping with other applications will be deemed mutually exclusive, and will be resolved through an auction. The Wireless Telecommunications Bureau, by public notice, may specify a limited period before the filing of short-form applications (FCC Form 175) during which applicants may enter into a settlement to resolve their mutual exclusivity, subject to the provisions of § 1.935.

(2) ~~Following this 30-day period filing window, if no third party has filed a license application to serve an unserved area pursuant to 27.14(j)(1), the unserved area will be licensed automatically to the original licensee, and thereafter be deemed part of the original licensee's license area, and third parties can file license applications for remaining unserved areas where licenses have not been issued or for which there are no pending applications. If the original licensee or a third party files an application, that application will be placed on public notice for 30 days. If no mutually exclusive application is filed, the application will be granted, provided that a grant is found to be in the public interest. If a mutually exclusive application is filed, it will be resolved through an auction. The Wireless Telecommunications Bureau, by public notice, may specify a limited period before the filing of short form applications (FCC Form 175) during which applicants may enter into a settlement to resolve their mutual exclusivity, subject to the provisions of § 1.935.~~

(3) ~~Any~~The licensee acquiring an unserved area pursuant to 27.14(j)(1) will have one year from the date the new license is issued to complete its construction and provide signal coverage and offer service over 100 percent of the geographic area of the new license area. If the licensee fails to meet this construction requirement, its license will automatically terminate without Commission action and it will not be eligible to apply to provide service to this area at any future date. One hundred percent of the licensed area covered by any licensee who fails to meet the one year construction requirement would then be licensed automatically to the original licensee, and, thereafter, be deemed part of the original licensee's license area.

## ATTACHMENT 2

### Proposed Rule Changes to Clarify the Circumstances in Which Licensees Will be Subject to Additional Monetary Fines and License Forfeitures for Failing to Meet Build-Out Requirements

27.14(g)(1) If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years. ~~and~~ Such licensee may be subject to enforcement action, including forfeitures. ~~In addition, such an EA or CMA licensee or may lose authority to operate in part of the remaining unserved areas of the license, if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term.~~

27.14(g)(2) If any such EA or CMA licensee fails to provide signal coverage and offer service to at least 70 percent of the geographic area of its license authorization by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. ~~Such licensee may also be subject to enforcement action, including forfeitures.~~ In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may also be subject to enforcement action, including forfeitures, and may be subject to license termination, if the licensee has failed to provide substantial service in the geographic area of the license authorization at the end of the license term. ~~In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection.~~

27.14(h)(1) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area by no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), the term of the license authorization will be reduced by two years. ~~and~~ In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark such licensee may be subject to enforcement action, including forfeitures, or may lose authority to operate in part of the remaining unserved areas of the license, if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term. ~~In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark may lose authority to operate in part of the remaining unserved areas of the license.~~

27.14(h)(2) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 75 percent of the population in any EA comprising the REAG license area by the end of the license term, for each such EA that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service. In addition, a REAG licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark within any EA. Such licensee may also be subject to enforcement action, including forfeitures, and may be subject to license termination within that EA, if the licensee has failed to provide substantial service in the geographic area of the license authorization by the end of the license term. --In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection. ~~In addition, a REAG licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark within any EA may be subject to license termination within that EA.~~

27.14(i)(1) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 40 percent of the population in its license area by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years. In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark and such licensee may also be subject to enforcement action, including forfeitures, or --~~In addition, such licensee that provides signal coverage and offers service at a level that is below the interim benchmark may lose authority to operate in part of the remaining unserved areas of the license, if the licensee has not taken meaningful steps toward service implementation sufficient to demonstrate an ability to meet the applicable construction standard at the end of the license term.~~ --For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

27.14(i)(2) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 75 percent of the population in its license area by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. In addition, Such licensee such a licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may also be subject to enforcement action, including forfeitures, and may be subject to license termination, if the licensee has failed to provide substantial service in the geographic area of the license authorization by the end of the license term. --In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection. ~~In addition, such a licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may be subject to license termination.~~ For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.